



# **DÁIL ÉIREANN**

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## **AN BILLE CARTHANAS 2007 CHARITIES BILL 2007**

### **LEASUITHE A RINNE AN SEANAD AMENDMENTS MADE BY THE SEANAD**

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# DÁIL ÉIREANN

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## AN BILLE CARTHANAS 2007 [BILLE DÁIL ARNA LEASÚ AG AN SEANAD]

### CHARITIES BILL 2007 [DÁIL BILL AMENDED BY THE SEANAD]

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*Leasuithe a rinne an Seanad  
Amendments made by the Seanad*

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*[The page and line references  
in this list of amendments are  
to the text of the bill as passed  
by Dáil Éireann.]*

#### SECTION 2

1. In page 8, subsection (1), between lines 3 and 4, to insert the following:

“ “Act of 1998” means the Education Act 1998;”.

2. In page 8, subsection (1), to delete line 7 and substitute the following:

“ “body” includes, in relation to a trust in respect of which there is only one trustee, that trustee;”.

3. In page 8, subsection (1), to delete lines 24 to 28 and substitute the following:

“(iii) none of the property of which is payable to the members of the body other than in accordance with *section 88*;”.

4. In page 8, subsection (1), to delete lines 31 and 32 and substitute the following:

“ “charitable trust” means a trust—

(a) established for a charitable purpose only,

(b) established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose except for moneys expended in the management of the trust, and

(c) none of the property of which is payable to the trustees of the trust other than in accordance with *section 88*;”.

5. In page 9, subsection (1), between lines 22 and 23 to insert the following:

“ “education body” means—

(a) a vocational education committee established by section 7 of the Vocational Education Act 1930,

(b) a recognised school within the meaning of the Act of 1998,

- (c) a management committee established for the purposes of section 37 of the Act of 1998,
  - (d) a parents' association established in accordance with section 26 of the Act of 1998,
  - (e) a student council established in accordance with section 27 of the Act of 1998,
  - (f) an institution of higher education within the meaning of the Higher Education Authority Act 1971 (amended by section 52 of the Institutes of Technology Act 2006), or
  - (g) a body established solely for the purpose of funding not more than one such institution of higher education;”.
6. In page 10, subsection (1), line 4, to delete “activities, or” and substitute the following:

“activities, whether in the State or outside the State, or”.

### SECTION 3

7. In page 11, subsection (1), line 29, to delete “regarded as being”.

8. In page 11, lines 34 and 35, to delete subsection (2) and substitute the following:

“(2) A purpose shall not be a charitable purpose unless it is of public benefit.”.

9. In page 11, to delete lines 36 and 37 and substitute the following:

“(3) Subject to *subsection (4)*, a gift shall not be of public benefit unless—”.

10. In page 12, between lines 25 and 26, to insert the following subsection:

“(10) For the purposes of this section, a gift is not a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult—

- (a) the principal object of which is the making of profit, or
- (b) that employs oppressive psychological manipulation—
  - (i) of its followers, or
  - (ii) for the purpose of gaining new followers.”.

### SECTION 7

11. In page 13, between lines 31 and 32, to insert the following subsection:

“(2) The Revenue Commissioners shall not be bound by a determination of the Authority as to whether a purpose is of public benefit or not in the performance by them of any function under or in connection with—

- (a) section 207, 208 or 609 of the Taxes Consolidation Act 1997,
- (b) section 17 or 76 of the Capital Acquisitions Tax Consolidation Act 2003,  
or
- (c) section 82 of the Stamp Duties Consolidation Act 1999.”.

## SECTION 8

- 12.** In page 13, paragraph (b), lines 37 to 39, to delete all words from and including “or” in line 37 down to and including “months.” in line 39 and substitute the following:

- “(c) dividends paid in respect of such shares, being dividends that are not retained as part of the property of the trust for more than 12 months, or
- (d) any other distribution of cash or assets made in respect of such shares, being cash or assets that are not retained as part of the property of the trust for more than 12 months.”.

## SECTION 15

- 13.** In page 16, between lines 7 and 8, to insert the following subsection:

“(2) The Minister may, in relation to the performance by the Authority of its functions under *section 39*, give a direction in writing to the Authority requiring it to comply with such matters specified in the direction relating to—

- (a) the maintenance of the register,
- (b) the collection and collation of information for the purpose of maintaining the register, or
- (c) the entry into agreements with persons, other than charitable organisations, for the purpose of obtaining such information.”.

## SECTION 32

- 14.** In page 22, subsection (2)(c), line 42, to delete “statute” and substitute “enactment”.
- 15.** In page 22, subsection (2)(c)(i), lines 43 and 44, to delete “statute” and substitute “enactment”.

## SECTION 37

- 16.** In page 26, subsection (2)(a), line 16, to delete “established” and substitute “established pursuant to a direction”.
- 17.** In page 26, subsection (4), line 27, to delete “under *subsection (1)*” and substitute the following:

“pursuant to a direction under *subsection (1)*”.

## SECTION 39

- 18.** In page 27, subsection (4), line 17, to delete “Subject to *section 40*, a charitable organisation” and substitute the following:

“A charitable organisation (other than a charitable organisation to which *section 40* applies)”.

- 19.** In page 27, subsection (5), line 26, to delete “An application” and substitute “Subject to *subsection (6)*\*, an application”.

[\*This reference is consequential on the new subsection inserted by amendment no. 20.]

**20.** In page 29, between lines 13 and 14, to insert the following subsection:

“(6) The Authority may exempt an applicant for registration under this section from such of the requirements of *subsection (5)* as it considers appropriate where it is of the opinion that compliance by the applicant with those requirements would be unduly onerous having regard to his or her circumstances.”.

**21.** In page 29, subsection (6), line 14, to delete “*section 40*” and substitute “*section 43(10)*”.

**22.** In page 30, subsection (9), to delete line 13 and substitute the following:

“(b) the entitlement under *section 45(1)* to appeal the decision.”.

#### SECTION 40

**23.** In page 31, subsection (1)(a), line 7, to delete “1997,” and substitute “1997, and”.

**24.** In page 31, lines 14 to 18, to delete subsection (2) and substitute the following:

“(2) The Authority may request the Revenue Commissioners to provide it with all such information in the possession or procurement of the Revenue Commissioners, relating to a charitable organisation to which *subsection (1)* applies, as the charitable organisation would be required to provide to the Authority were it making an application under *section 39*.

(3) Notwithstanding any enactment or rule of law, the Revenue Commissioners shall comply with a request under *subsection (2)*.”.

**25.** In page 31, subsection (5), to delete lines 28 to 30 and substitute the following:

“(5) The Authority shall, as soon as practicable after receiving information pursuant to a request under *subsection (2)* or a requirement under *subsection (3)* in respect of a charitable organisation, enter in the register—”.

#### SECTION 41

**26.** In page 32, subsection 1(a), line 14, to delete “registered” and substitute “registered or deemed to be registered”.

**27.** In page 32, subsection (1)(b), line 17, to delete “registered” and substitute “registered or deemed to be registered”.

**28.** In page 32, subsection (1)(c), line 20, to delete “registered” and substitute “registered or deemed to be registered”.

**29.** In page 32, subsection (2), line 23, to delete “registered” and substitute “registered or deemed to be registered”.

#### SECTION 43

**30.** In page 34, lines 7 to 48, and in page 35, lines 1 to 23, to delete section 43 and substitute the following new section:

“Removal of charitable organisation from register.

43.—(1) Where the Authority, after consultation with the Garda Síochána, is of opinion that a body registered in the register is or has become an excluded body by virtue of its promoting purposes that are—

- (a) unlawful,
- (b) contrary to public morality,
- (c) contrary to public policy,
- (d) in support of terrorism or terrorist activities, or
- (e) for the benefit of an organisation, membership of which is unlawful,

it shall remove from the register all of the information entered in relation to that body and the body shall thereupon cease to be registered.

(2) Where the name of a charitable organisation is changed in contravention of *section 42(2)*, the Authority shall remove from the register all of the information entered in relation to that organisation and the organisation shall thereupon cease to be registered.

(3) If a registered charitable organisation that is a body corporate is convicted on indictment of an offence, the Authority may remove from the register all of the information entered in relation to that organisation, and that organisation shall, thereupon, cease to be registered.

(4) Where, in relation to a charitable organisation, the Authority is satisfied that there has been a contravention of—

- (a) *section 47, 48, 50 or 52*, or
- (b) a direction under *section 50 or 51*,

the Authority may remove from the register all of the information entered in relation to that organisation, and that organisation shall, thereupon, cease to be registered.

(5) If a registered charitable organisation fails to comply with a direction of the Authority under *section 53*, the Authority may remove from the register all of the information entered in relation to that organisation, and that organisation shall, thereupon, cease to be registered.

(6) Where the Authority is of opinion that a body registered in the register is not a charitable organisation, it shall apply to the High Court for a declaration that the body is not a charitable organisation.

(7) If the High Court, upon an application under *subsection (6)*, grants a declaration that the body in respect of which the application is made is not a charitable organisation, the body shall thereupon cease to be a registered charitable organisation and the Authority shall remove from the register all of the information entered in relation to that body.

(8) If a charity trustee of a registered charitable organisation ceases to be qualified for the position of charity trustee by virtue of *section 55*, the Authority may apply to the High Court for an order authorising the Authority to remove the charitable organisation from the register, and, upon such an application, the High Court may make such an order if it considers it appropriate in all of the circumstances.

(9) If the High Court makes an order under *subsection (8)*, the Authority shall forthwith remove from the register all of the information entered in relation to that organisation, and that organisation shall thereupon cease to be registered.

(10) A body that, in accordance with this section, has ceased to be registered for the purposes of *section 39* shall not, before the expiration of one year, or such shorter period as the Minister may determine, from the date of its ceasing to be so registered, be eligible to apply to be registered, and the Authority shall not, before such expiration, perform any functions in relation to that organisation under *section 39(6)*.

(11) Where, in accordance with this section, a body ceases to be registered, the Authority shall enter in the register a statement that the body has ceased to be registered and a statement of the reasons therefor.”.

#### SECTION 44

**31.** In page 36, subsection (6), line 15, to delete “cease to be” and substitute “cease to be deemed to be”.

**32.** In page 36, to delete lines 24 to 40 and substitute the following:

“(9) If a charity trustee of a body that is deemed to be registered in the register by virtue of *section 40* ceases to be qualified for the position of charity trustee by virtue of *section 55*, the Authority may apply to the High Court for an order authorising the Authority to inform the body by notice in writing that the body is no longer deemed to be so registered, and, upon such an application, the High Court may make such an order if it considers it appropriate in all of the circumstances.

(10) Upon the service of a notice under *subsection (9)*, the body to which the notice applies shall cease to be deemed to be registered in the register.

(11) A body that, in accordance with this section, has ceased to be deemed to be registered in the register shall not, before the expiration of one year, or such shorter period as the Minister may determine, from the date of its ceasing to be so registered, be eligible to apply to be registered, and the Authority shall not, before such expiration, perform any functions in relation to that organisation under *section 39(6)*.”.

#### SECTION 45

**33.** In page 37, subsection (2), line 7, to delete “*subsection (1), (2), (10) or (11) of section 43*” and substitute “*section 43 (other than subsections (7) and (9))*”.

**34.** In page 37, subsection (3), lines 12 and 13, to delete all “*subsection (1) or (2) of section 44*” in line 13 and substitute “*section 44 (other than subsections (8) and (10))*”.

**35.** In page 37, lines 17 to 21, to delete subsection (4).

**36.** In page 37, line 36, subsection (7)(b), to delete “subject to such conditions” and substitute “and impose such conditions on the appellant”.

**37.** In page 37, subsection (8), lines 42 and 43, to delete paragraph (b) and substitute the following:

“(b) revoke the notice under *section 44* and impose such conditions on the appellant as the Tribunal may specify, or”.

#### SECTION 46

**38.** In page 38, subsection (6), line 29, to delete “(3)” and substitute “(2)”.

#### SECTION 47

**39.** In page 39, subsection (1)(c), line 29, to delete “have been” and substitute “are”.

**40.** In page 40, lines 48 and 49, to delete subsection (11) and substitute the following:

“(11) This section does not apply to charitable organisations that are companies.”.

#### SECTION 48

**41.** In page 41, lines 34 and 35, to delete subsection (6) and substitute the following:

“(6) This section does not apply—

(a) to a charitable organisation that is a company,

(b) to an education body,

(c) to a charitable organisation in respect of a financial year in which its gross income or total expenditure is less than—

(i) €10,000, or

(ii) such greater amount, not exceeding €50,000, as may be prescribed,

or

(d) in relation to a centre for education designated by the Minister under section 10(4) of the Act of 1998.”.

#### SECTION 50

**42.** In page 42, subsection (4), line 17, to delete “Notwithstanding *subsection (3)*, the” and substitute “The”.

**43.** In page 42, subsection (4), line 19, to delete “that subsection” and substitute “*subsection (3)*”.

**44.** In page 42, subsection (6), line 27, to delete “(2)” and substitute “(3)”.

**45.** In page 42, subsection (7), lines 34 and 35, to delete all words from and including “or” in line 34 down to and including “*subsection (4)*” in line 35.

**46.** In page 43, subsection (11), lines 8 and 9, to delete all words from and including “, or” in line 8 down to and including “*subsection (4)*,” in line 9.

**47.** In page 43, lines 17 and 18, to delete subsection (13) and substitute the following:

“(13) This section does not apply—

(a) to a charitable organisation that is a company,

(b) to an education body,

(c) to a charitable organisation in respect of a financial year in which its gross income or total expenditure is less than—

(i) €10,000, or

(ii) such greater amount, not exceeding €50,000, as may be prescribed,

or

(d) in relation to a centre for education designated by the Minister under section 10(4) of the Act of 1998.”

**48.** In page 43, subsection (14), to delete lines 23 to 29 and substitute the following:

“(b) in relation to a charitable organisation that—

(i) is established in an EEA state, and

(ii) does not have a principal place of business in the State,

a person who is qualified under the law of that EEA state to perform functions the same as or similar to those performable in the State by a person referred to in *paragraph (a)*.”

#### SECTION 52

**49.** In page 44, subsection (1), lines 16 to 18, to delete all words from and including “year” in line 16 down to and including “regulations.” in line 18 and substitute “year.”

**50.** In page 44, lines 19 to 26, to delete subsections (2) and (3) and substitute the following:

“(2) The Minister may make regulations for the purposes of *subsection (1)*.

(3) Without prejudice to the generality of *subsection (2)*, regulations under that subsection may—

(a) contain different provisions in relation to different classes of information and different classes of charitable organisation,

(b) require that an annual report contain such information (other than information required to be provided in an annual report under *subsection (1)*) as may be specified in the regulations, and

(c) provide that a report referred to in that subsection shall be prepared in such manner as is specified in the regulations.

(4) Subject to *section 48(6)* and *50(13)*, the following shall be attached to an annual report submitted by a charitable organisation in accordance with this section.”

#### SECTION 54

**51.** In page 45, subsection (1), line 15, to delete “any rule of law” and substitute “any enactment or rule of law”.

#### SECTION 55

**52.** In page 45, subsection (1), line 25, to delete “(2)” and substitute “(3)”.

**53.** In page 45, subsection (1)(f), line 37, to delete “2002” and substitute “2008”.

#### SECTION 57

- 54.** In page 46, subsection (1), line 45, to delete “If a charity trustee” and substitute “A charity trustee”.
- 55.** In page 46, subsection (1), line 46, to delete “organisation complies” and substitute “organisation who complies”.
- 56.** In page 47, subsection (1), lines 5 and 6, to delete all words from and including “the first” in line 5 down to and including “may be,” in line 6.

#### SECTION 62

- 57.** In page 49, subsection (3), line 1, to delete “2001” and substitute “2007”.

#### SECTION 68

- 58.** In page 53, subsection (1), line 8, to delete “The Authority may, subject to *subsection (2)*” and substitute “Subject to *subsection (2)*, the Authority may”.
- 59.** In page 53, to delete subsection (2) and substitute the following:
- “(2) A direction under *subsection (1)* shall not be given unless the Authority is of opinion that—”.
- 60.** In page 53, subsection (3), line 28, to delete “charitable organisation” and substitute “charitable organisation or charity trustee”.

#### SECTION 70

- 61.** In page 55, subsection (1)(b), lines 15 and 16, to delete “Minister for Enterprise, Trade and Employment” and substitute “Director of Corporate Enforcement”.

#### SECTION 73

- 62.** In page 56, subsection (1), line 8, to delete “*section 47, 48, 50, 51 or 52*” and substitute the following:

“*section 47, 48, 50 or 52 or a direction under section 51(2)*”.

#### SECTION 74

- 63.** In page 57, subsection (4), to delete lines 24 and 25.

#### SECTION 76

- 64.** In page 59, before section 76, to insert the following new section:

“Secretariat and premises of Tribunal.

76.—(1) The Minister shall, with the consent of the Minister for Finance provide the Tribunal with such and so many staff as he or she considers appropriate to perform the functions of a secretariat to the Tribunal including staff who while assigned to perform those functions are also assigned to perform similar functions on behalf of one or more other bodies (other than the Authority) established by or under an Act of the Oireachtas.

(2) The Minister shall, with the consent of the Minister for Finance provide the Tribunal with premises in which to perform its functions and, if the Minister and the Minister for Finance consider appropriate, such premises may be premises that are occupied by one or more other bodies (other than the Authority) established by or under an Act of the Oireachtas.”.

#### SECTION 89

**65.** In page 65, before section 89, to insert the following new section:

“Power of court to grant relief from liability for breach of trust.

89.—If, in any proceedings brought against a charity trustee for breach of trust, it appears to the court hearing the case that the charity trustee is or may be liable in respect of the breach of trust but that he or she acted honestly and reasonably and that having regard to all of the circumstances of the case he or she ought fairly to be excused for the breach of trust, the court may relieve him or her in whole or in part from his or her liability on such terms as the court deems appropriate.”.

#### SECTION 90

**66.** In page 65, before section 90, to insert the following new section:

“Dissolution of charitable organisation.

90.—Where a charitable organisation is dissolved, the property, or proceeds of the sale of the property, of the charitable organisation shall not be paid to any of the members of the charitable organisation without the consent of the Authority, notwithstanding any provision to the contrary contained in the constitution of the charitable organisation.”.

**67.** In page 66, lines 14 and 15, to delete “exempt or unlawful activity” and substitute “exempt activity, begging or receiving alms”.

**68.** In page 66, line 24, to delete “or unlawful”.

**69.** In page 66, lines 26 to 31, to delete all words from and including “1926,” in line 26 down to and including “alms;” in line 31 and substitute the following:

“1926, or

(b) collecting money for a lottery (including a sweepstake) declared by the Gaming and Lotteries Act 1956 not to be unlawful;”.

**70.** In page 67, lines 4 and 5, to delete “collection or exempt or unlawful activity” and substitute the following:

“collection, exempt activity, begging or receiving alms”.

#### SECTION 91

**71.** In page 70, to delete lines 5 to 10 and substitute the following:

“(a) a collection box into which money is placed shall bear the number assigned in respect of the collection and specified in the collection permit concerned and shall, unless the Authority otherwise directs as respects the collection concerned, be sealed in such manner as will prevent access to money placed in the box while the seal remains in place;”.

**72.** In page 70, to delete lines 19 to 24 and substitute the following:

“(d) a collection box shall bear the name and registered number of the charitable organisation on behalf of which the collection is being made in a prominent and clearly legible manner.”.

73. In page 70, to delete lines 32 to 40 and substitute the following:

“(i) in the case of a non-cash collection on behalf of a charitable organisation, bears the name and registered number of the charitable organisation in a prominent and clearly legible manner, and”.

74. In page 71, line 45, to delete “91” and substitute “91(1)(a)”.

#### NEW SECTION

75. In page 73, before Schedule 1, to insert the following new section:

“Sale of Mass cards. 96.—(1) A person who sells a Mass card other than pursuant to an arrangement with a recognised person shall be guilty of an offence.

(2) In proceedings for an offence under this section it shall be presumed, until the contrary is proved on the balance of probabilities, that the sale of the Mass card to which the alleged offence relates was not done pursuant to an arrangement with a recognised person.

(3) In this section—

“Church” means the Holy Catholic Apostolic and Roman Church;

“Mass card” means a card or other printed material that indicates, or purports to indicate, that the Holy Sacrifice of the Mass (howsoever described) will be offered for—

(a) the intentions specified therein, or

(b) such intentions as will include the intentions specified therein;

“priest” means a priest ordained according to the rites of the Church;

“recognised person” means—

(a) a bishop of the Church, or

(b) a provincial of an order of priests established under the authority of, and recognised by, the Church;

“sell” includes, in relation to a Mass card, offer or expose the card for sale or invite the making by a person of an offer to purchase the card.”.

#### SCHEDULE 1

76. In page 74, line 2, to delete “15” and substitute “20”.

77. In page 76, line 45, to delete “Parliament,” and substitute “Parliament, or”.

78. In page 77, lines 3 and 4, to delete “or

(d) becomes a member of a local authority,”.

79. In page 77, line 10, to delete “Parliament,” and substitute “Parliament, or”.

- 80.** In page 77, lines 12 and 13, to delete “or  
(d) becomes a member of a local authority,”.
- 81.** In page 77, lines 17 and 18, to delete “or his or her membership of the local authority”.
- 82.** In page 77, line 21, to delete “or a member of the local authority concerned”.
- 83.** In page 77, lines 24 and 25, to delete “or a member of a local authority”.
- 84.** In page 77, line 26, to delete “or member”.